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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 CR 269 (CM)

5 MALIK SANCHEZ,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 6, 2021

12:40 p.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 Acting United States Attorney for the  
Southern District of New York

16 KAYLAN E. LASKY

Assistant United States Attorney

17 DAVID PATTON

18 FEDERAL DEFENDERS OF NEW YORK

Attorney for Defendant

19 BY: CLAY KAMINSKY

20 ALSO PRESENT:

21 Francesca Piperato, Pretrial Services Officer

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1 (Case called)

2 THE DEPUTY CLERK: Please state your appearances.

3 MS. LASKY: Good afternoon, your Honor. Kaylan Lasky,  
4 for the government.

5 THE COURT: Good afternoon, Ms. Lasky.

6 MR. KAMINSKY: Good afternoon, your Honor. Clay  
7 Kaminsky, for Malik Sanchez.

8 THE COURT: Good afternoon, Mr. Kaminsky.

9 THE DEPUTY CLERK: Also on the line, Judge, is  
10 Francesca Piperato, from pretrial services.

11 Did I say your name correctly, Francesca?

12 MS. PIPERATO: Yes, Francesca Piperato, from pretrial  
13 services.

14 THE COURT: Ms. Francesca, okay, good.

15 And, thank you, Francesca, I got the updated report.

16 MS. PIPERATO: No problem, your Honor.

17 MR. KAMINSKY: Your Honor, I don't have the updated  
18 report. Is that something I should have?

19 THE COURT: The updated pretrial services report tells  
20 me when his next court date is in state court. That's the  
21 update.

22 MR. KAMINSKY: Okay. Understood, your Honor.

23 THE COURT: I'm happy to get you a copy.

24 MR. KAMINSKY: That's fine, your Honor.

25 THE COURT: Okay.

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1 Mr. Kaminsky, it's your nickel.

2 MR. KAMINSKY: Thank you, your Honor.

3 So we can get into the facts and why conditions can be  
4 set that would assure Mr. Sanchez's appearance in court and the  
5 safety of the community, but I think there's an antecedent  
6 legal issue, which is whether there can even be a contention  
7 hearing in this case.

8 THE COURT: Yes, I understand the antecedent legal  
9 issue, and you are correct that the crime that's charged does  
10 not fall within the detention hearing statute. It's a  
11 bootstrap argument that's being made by the government alleging  
12 that the hoax -- the hoax, h-o-a-x, hoax, pretend thing -- that  
13 the government has charged this man with, a crime that the  
14 government admits, by virtue of its charge, was never intended  
15 to be anything other than pretend, is a crime that involves --  
16 I'm sorry, makes this a case -- not a crime -- makes this a case  
17 that involves either an 844(i), the use or threatened use of a  
18 weapon of mass destruction, even though if it did, the  
19 government would have charged that -- I'm sorry, that's the use  
20 of explosives to damage a building or property, the government  
21 would have charged that if it really did involve that, or  
22 2332a(a), two little As, use or threatened use of a weapon of  
23 mass destruction. Boy, if it really involved that, the  
24 government would have charged that. I know this. I withdrew  
25 the Newburgh forces.

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1           So, I understand your argument and the government's  
2 bootstrap argument. I don't think I'm going to need to get  
3 there. It presents a fascinating legal issue, it would make a  
4 great law school exam question, but I don't think I need to get  
5 there.

6           Can we talk about the facts and conditions, please?

7           MR. KAMINSKY: Yes, your Honor.

8           Your Honor, I think what the conditions should be,  
9 which is a little bit more than I proposed in magistrates  
10 court --

11          THE COURT: Right, you didn't propose nearly enough.

12          MR. KAMINSKY: Your Honor, I think he should be on  
13 home detention with electronic monitoring. His mother, who is  
14 in the court here today --

15          THE COURT: Hello, ma'am.

16          MR. KAMINSKY: -- Nathali Chamba, who works for the  
17 Department of Education, will be a third-party custodian, and  
18 he will be on home detention with electronic monitoring.  
19 That's my proposal, your Honor. We can do a bond in the amount  
20 that your Honor sees fit. May.

21          I speak a little bit about the risk of flight because  
22 I did some preparation on that?

23          THE COURT: No, I want you to. I mean, that's part of  
24 what you need to do.

25          MR. KAMINSKY: Your Honor, there's no reason to

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1 believe he's a risk of flight. I spoke with his Legal Aid  
2 attorney, who I actually hoped to have here, but she got caught  
3 up in 100 Centre Street. So here's what happened: On  
4 March 20th, he was arrested after he waited -- there was an  
5 amazing incident that was charged -- he waited for the police to  
6 arrive, and he calmly was arrested. He has never been accused  
7 of -- there has never been any bench warrant, there has never  
8 been any --

9 THE COURT: What was the date of the hearing he  
10 allegedly missed? Was that the one that was five days after he  
11 was put in the Essex County detention facility?

12 MR. KAMINSKY: No, your Honor. There is -- in  
13 fairness to the government, there was an earlier one on  
14 March 8th, and here's what happened: They gave him a slip of  
15 paper when he was arrested that said he was supposed to go to  
16 100 Centre Street. They also took his phones. He communicated  
17 diligently with his attorney by email. It turned out that it  
18 was supposed to be a remote hearing. His attorney wrote him an  
19 email, which he didn't check because he didn't have the phone.  
20 He later got it that day. His attorney told him about the  
21 hearing on the day of. I have this in confirmation from the  
22 Legal Aid attorney. Her name is Jacqueline Dombroff. She told  
23 him that day. He didn't get the email. He wrote her that  
24 night and said, oh, no, it looks like I missed it, can we  
25 reschedule? And then he kept in touch with her after that. He

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1 kept in touch with her before that and after that. A ball was  
2 dropped. It was not, in candor and in fairness, dropped by  
3 Mr. Sanchez. He was in touch with his attorney. He was not  
4 given the information of where he needed to go, no bench  
5 warrant was issued, no bench warrant has ever been issued.

6 THE COURT: That's because there are a lot of problems  
7 over there right now. I mean, let's not kid ourselves. I've  
8 been in touch with a number of state court judges, including  
9 the chief judge, and they're having difficulty getting their  
10 operations restarted. It's a much more complicated and  
11 cumbersome process than we have to go through. We're very  
12 lucky here.

13 MR. KAMINSKY: Yes.

14 THE COURT: So, there are balls getting dropped, and I  
15 understand that. Then he missed a hearing on the 19th of  
16 April, but he couldn't very well go because he was in Essex.

17 MR. KAMINSKY: Correct. And he was basically kept  
18 incommunicado because he was under quarantine.

19 THE COURT: Right.

20 MR. KAMINSKY: He successfully completed probation  
21 once before. Another element that we might make part of the  
22 bail package is mental health treatment. He previously was  
23 under the care of a psychiatrist, he got medication, he was in  
24 counseling. The care of the psychiatrist ended some years ago.  
25 The counseling ended because of the pandemic, and it's during

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1 the pandemic that he appears to have started reaching out in  
2 this way through YouTube. You know, I think that psychological  
3 and psychiatric care could be part of the bail package, your  
4 Honor.

5 THE COURT: Oh, yeah, oh, yeah, anybody who thinks  
6 what I saw in the video was funny is definitely in need of  
7 mental healthcare, definitely.

8 MR. KAMINSKY: Your Honor, the videos clearly aren't  
9 funny.

10 THE COURT: They're not funny.

11 MR. KAMINSKY: But they're also not a reason to detain  
12 a 19-year-old.

13 The other reason, the risk of flight, the government  
14 says that his guidelines range is 30 to 36 months. It's not.  
15 That's giving him all kinds of enhancements that don't apply.  
16 It is also using each time he says in that 30-second clip that  
17 he's going to detonate a bomb is a separate incident of a  
18 threat, to say that there's more than one threat. I calculate  
19 his guidelines at either zero to six, if he gets credit for  
20 this being a one-time thing, where there was a little  
21 forethought, or if he doesn't get that credit, then six to  
22 twelve. He's in criminal history category --

23 THE COURT: I take the guidelines -- presumptive  
24 guidelines into account very slightly on a crime of this  
25 nature.

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1 MR. KAMINSKY: Yes, your Honor.

2 THE COURT: This is a crime with a five-year statutory  
3 maximum penalty. You know how often I see crimes with a  
4 five-year statutory penalty? Maybe once every three years.

5 MR. KAMINSKY: I don't see them very often either,  
6 your Honor.

7 This is -- the government goes into his juvenile  
8 records and goes through allegations that weren't even  
9 substantiated. I'm not sure -- look, he says some upsetting  
10 things, but he's bailable.

11 THE COURT: Okay. I'll hear from the government.  
12 I've read your letter.

13 MS. LASKY: Thank you, your Honor. I won't belabor  
14 all of the different points that we make in our letter. I will  
15 highlight a few things, however, for the government's position,  
16 which, first of all, I think it's very important to note that  
17 despite repeated interactions with the criminal justice system,  
18 the defendant is not changing his behavior. This is, of  
19 course, in reference to the multiple different arrests --

20 THE COURT: Yes, but those are state court crimes, and  
21 the state court will deal with them. And this Court will not  
22 be used as a vehicle to get around the state's policy decisions  
23 on bail. Okay? I won't be used in that way. I will not be  
24 used in that way.

25 MS. LASKY: Understood, your Honor.



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1 THE COURT: So, okay. He's got some state crimes that  
2 he's been accused of — low-level felony, high-level  
3 misdemeanors, I think there are three. He is -- maybe one of  
4 them was already disposed of. He has state court appearances.  
5 The state let him out on those. That's the state's business,  
6 it's not mine. And I'm not making a bail decision on the basis  
7 of the state court crimes of which he has not yet been  
8 convicted. Okay? I will not make a bail decision on that  
9 basis.

10 MS. LASKY: Understood, your Honor. It's his response  
11 to judicial and criminal intervention that is of concern to the  
12 government.

13 THE COURT: Why? He had one meaningful response to  
14 judicial intervention, and he seems to have gotten through it  
15 all right, and then for three years, he didn't do anything.

16 MS. LASKY: Correct, your Honor. It's the pattern of  
17 behavior, particularly in the last six months. And,  
18 understood, your Honor, but I think with the recent cases that  
19 have been disposed of, as your Honor pointed out, there is the  
20 adjournment in contemplation of dismissal, also the conditional  
21 discharge for climbing the Queensboro Bridge. Both of those,  
22 as I understand it from communications with the state  
23 prosecutor, included a condition that the defendant not get  
24 rearrested for six months.

25 THE COURT: And the state court can take care of it.

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1 MS. LASKY: Understood, your Honor.

2 THE COURT: He's got to go in front of a state judge  
3 on the 19th of May. I don't know whether in person or  
4 virtually, but he has to do that. And if at that time, the  
5 state court, which will undoubtedly be apprised of what you  
6 have charged him with, says, you've got yourself arrested,  
7 guess what — that's the state court's business, it's not my  
8 business.

9 MS. LASKY: Yes, your Honor.

10 Additionally, the evidence in this case is very  
11 strong. As you've seen already, your Honor, much of this  
12 conduct, and the conduct particularly charged here in the bomb  
13 threat, is on video, and we also have social media records,  
14 statements from victims, which also provide strong incentive to  
15 flee. There is also one video --

16 THE COURT: How do they provide incentive to flee?

17 MS. LASKY: The fact that the evidence in the case is  
18 strong, your Honor.

19 THE COURT: Okay. When guys are arrested with drugs,  
20 the evidence is strong, and they're presumption cases, and  
21 frequently people are let out. This is not a presumption case.  
22 Yes, I've seen the crime. I've seen it, because he videotaped  
23 it, and he broadcast it on YouTube, and it's disgusting. It's  
24 absolutely disgusting. It's juvenile, it's puerile, it's  
25 deeply troubling, but it's bailable.

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1 MS. LASKY: Yes, your Honor.

2 Your Honor has also pointed out that this is the most  
3 serious -- well, not in these words exactly, but it is the most  
4 serious charge the defendant has appeared to face.

5 THE COURT: Yes, the most serious charge he has  
6 appeared to face is that he perpetrated a hoax, he did  
7 something pretend, which, under federal law, subjects him to a  
8 greater punishment than spraying somebody with pepper spray  
9 does under state law.

10 MS. LASKY: Correct, your Honor, which also  
11 provides --

12 THE COURT: Absolutely true. One of the oddities of  
13 federal law, that a real incident subjects him to, I don't  
14 know, one to three, and a hoax can subject him to as much as  
15 five years.

16 MS. LASKY: Yes, your Honor.

17 THE COURT: Right.

18 MS. LASKY: So it's --

19 THE COURT: Got that.

20 MS. LASKY: Understood, your Honor.

21 So it's for these reasons, your Honor, that the  
22 government contends that he is a risk of flight. And I  
23 understand you've read the government's submission, so I won't  
24 belabor --

25 THE COURT: I have, I have, and I find that this

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1 defendant poses no serious – by the way, the statute does say  
2 serious – serious risk of nonappearance if he is released on  
3 the conditions I would propose, which it turns out Mr. Kaminsky  
4 has come to his senses and realized are the conditions that he  
5 should have proposed all along, which are home confinement, on  
6 a bracelet, with mental health counseling. He's had two  
7 encounters with the criminal justice system that would be  
8 pertinent. He's complied with the conditions of probation for  
9 two years, which does not necessarily suggest that he would  
10 fail to abide by the orders of this Court.

11 He failed to attend one videoconference on his state  
12 law case in March. I have nothing but respect for the state  
13 courts as a former state court judge. I have some  
14 understanding of what they must have been laboring under for  
15 the last year. I would give pretty much anybody a pass on that  
16 basis because I know what difficulty they are having getting  
17 restarted, getting people noticed, and things like that. I  
18 accept the proffer of Mr. Kaminsky from his state court lawyer  
19 that the defendant, as soon as he became aware of the  
20 conference, asked his lawyer to have it rescheduled, which does  
21 not suggest that he is someone who is trying to avoid coming to  
22 court when he's required to come to court. He obviously missed  
23 his conference on April 21st, but that's because he was in the  
24 Essex County Jail. And I want to make sure he doesn't miss the  
25 next conference, so that the state court judge can decide

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1 whether, in light of what has happened since he or she last saw  
2 Mr. Sanchez since he was arrested, the dispositions on the  
3 previous state court cases should be reversed, or that new  
4 conditions should be set, or even that they should put him in  
5 on bail on his state court case. That's a decision for the  
6 state court judge to make at his next scheduled appearance.

7 It's my assessment that if he's kept in his parents'  
8 home 24/7 on a monitoring bracelet, he does not present a  
9 serious risk of nonappearance.

10 Do you want to argue danger?

11 MS. LASKY: If your Honor is saying that danger is not  
12 pertinent because we're not capable of getting to that place,  
13 then I won't waste the Court's time, your Honor.

14 THE COURT: Well, yeah, because I just don't think you  
15 even come close on nonappearance. I really don't.

16 MS. LASKY: Understood.

17 THE COURT: So I, again, with great respect for  
18 Judge Wang, she was in a position where she had to make a  
19 decision fairly quickly. I've had a lot of time to consider  
20 this. They don't have that luxury upfront in the arraignment  
21 part, but --

22 MS. LASKY: Yes, your Honor. The government also does  
23 raise the argument about serious risk that the defendant will  
24 threaten or intimidate witnesses --

25 THE COURT: There's absolutely no proof that this

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1 defendant would threaten or intimidate a witness or that he  
2 even would know how to do so. His crimes, the things he's done  
3 that I've seen on tape, involved his going up to total  
4 strangers. He doesn't know their names, he doesn't know where  
5 they live. How is he supposed to intimidate them?

6 MS. LASKY: There is at least one incident, your  
7 Honor, where a person associated with one of the macing victims  
8 calls 911, her contact information was posted as part of his  
9 video. His followers, as I understand it, have since actually  
10 doxxed her, meaning they have sent her text messages and posted  
11 her information.

12 THE COURT: Has he?

13 MS. LASKY: No, your Honor, but I'm saying --

14 THE COURT: Has he violated any of his orders of  
15 protection?

16 MS. LASKY: Not as far as I know, your Honor.

17 THE COURT: Fine. Because if he violates an order of  
18 protection, all you have to do is call Mr. O'Neill, and he will  
19 be in so quick, his head won't have stopped spinning.

20 MS. LASKY: Understood, your Honor. I was just saying  
21 there was one instance where he knows the contact information  
22 and name of an individual.

23 But, understood, your Honor. If it's preferable to  
24 the Court, at this point, to talk about conditions --

25 THE COURT: I think we should talk seriously about

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1 conditions.

2 MS. LASKY: Okay, your Honor.

3 THE COURT: This is a young man who, as far as I can  
4 tell -- if you watched the video, and I have, of the incident  
5 that underlies this case, the first thing I thought was, this  
6 is a kid who needs to be seeing a psychiatrist, this is  
7 somebody who needs mental health counseling. I don't know if  
8 he needs to be on medication, I have no idea, I'm not that kind  
9 of a professional. Mr. Kaminsky tells me he has previously  
10 been on medication, so that it's possible that this is the  
11 process of being off his meds. I don't know. A lot of these  
12 kinds of things have cropped up during the pandemic. So we  
13 definitely need to get a mental health counselor, we definitely  
14 need to have him imprisoned, in quotes, in his home. But he  
15 comes from what appears to be a good, solid family, with whom  
16 he has appropriate parental child relationship, lives with his  
17 family. I just think that home confinement here -- I don't know  
18 what else the government needs or wants -- but with a relatively  
19 low bond, and an appropriate number of cosigners, and a little  
20 speech from me, we should be able to -- travel documents  
21 surrendered, no travel plus home confinement means home  
22 confinement, as he's about to find out, I think we should be  
23 able to dispose of this case fairly quickly, because I will say  
24 one thing for the government, it has very strong evidence.

25 MS. LASKY: Your Honor, if I may, at the last

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1 conference, as I recall, defense counsel had suggested a  
2 prohibition on live streaming.

3 THE COURT: Yes, that would be included in my  
4 conditions as well.

5 MS. LASKY: So would that be -- just to clarify for  
6 the record, would that be a prohibition on using an  
7 internet-capable device in order to ensure that that is adhered  
8 to, your Honor?

9 THE COURT: I don't think he can communicate with his  
10 lawyer.

11 MR. KAMINSKY: Yes, he's got to have internet access,  
12 so I can send him discovery, so he can do remote proceedings in  
13 the state. You'll know if he posts, right? I'm sure --

14 THE COURT: I assume pretrial can monitor that and  
15 will know if he posts.

16 Francesca, are you still on?

17 MS. PIPERATO: Yes.

18 THE DEPUTY CLERK: Did you hear the question?

19 THE COURT: So the question here is: We want to put a  
20 prohibition on him, as a condition of pretrial release, that he  
21 not post videos, or chats, or messages on the internet. Is  
22 there some way that you all can monitor that? I want him to be  
23 able to communicate with his attorney, so he needs to have  
24 email.

25 MS. PIPERATO: There's a little static on the line.



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1 THE DEPUTY CLERK: Hold on. The Judge will pick up  
2 the line. Let me just make sure we can do that.

3 THE COURT: No, I don't think we can do that.

4 THE DEPUTY CLERK: I have two people on it.

5 Should I ask her the question, Judge?

6 THE COURT: Yes. I'm going to ask Mr. O'Neill, who's  
7 at a better microphone, I think.

8 THE DEPUTY CLERK: Francesca?

9 MS. PIPERATO: Yes.

10 THE DEPUTY CLERK: The Judge is asking: One, do you  
11 have the ability to monitor the defendant's online activity?

12 MS. PIPERATO: We can monitor his computer. If the  
13 defendant has a laptop, we can monitor if he's not to have,  
14 like, social media accounts. We can see what he views on that  
15 one computer, or laptop, or iPad.

16 THE COURT: Okay. And his phones have been  
17 confiscated, right? The government has his phones, correct?

18 MS. LASKY: Yes, your Honor, although that is not to  
19 stop him from getting a new phone, of course.

20 But my understanding from another case that was  
21 somewhat analogous was that there might be issues if he, for  
22 example, started a new account or used a different streaming  
23 service that pretrial was not aware of, and so, in that case,  
24 it was set that he or she, in that case, was not able to use  
25 the internet except to communicate with lawyers or for medical

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1 reasons with the permission of pretrial, your Honor, for that  
2 reason.

3 THE COURT: Okay. Well, that's a good condition.

4 I do have another question for you that Mr. O'Neill  
5 reminds me. What has happened to the magazines? Which was  
6 really the only truly concerning thing in the underlying  
7 record, was the magazines.

8 MS. LASKY: They're part of the arrest evidence, your  
9 Honor.

10 THE COURT: Okay. So you've got them?

11 MS. LASKY: Yes, your Honor.

12 THE COURT: Okay.

13 Well, I have the most recent report from pretrial,  
14 which does recommend, continues to recommend, that the  
15 defendant be released on bond, cosigned by two financially  
16 responsible persons, with the defendant's mother to sign as the  
17 third-party custodian, and with a number of conditions.

18 So, I'm going to do that, and so we need to have a  
19 \$10,000 bond, to be signed by two financially responsible  
20 persons. That means they have to be acceptable to the  
21 government.

22 And, ma'am, I'm going to make you what's called a  
23 third-party custodian of your son. Okay?

24 So, Mr. Sanchez, I'm going to have to explain how  
25 you're going to live until this case gets resolved or until the

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1 state court does something with you, which they have a perfect  
2 right to do in connection with their cases.

3           You're going to live at home. You're going to have an  
4 electronic monitoring bracelet put on you, a location  
5 monitoring bracelet, so that your pretrial services officer who  
6 is supervising you will know if you leave the house. And  
7 you're only allowed to leave the house – you're only allowed to  
8 leave the house – to meet with your lawyer at times that are  
9 preapproved by your pretrial services officer, to meet with a  
10 doctor – I know many of these doctors' appointments, especially  
11 counseling appointments, are taking place virtually these days,  
12 which is another reason that we can't completely cut the  
13 defendant off from the internet, because the mental health part  
14 of this is very important to me – but to have medical  
15 appointments, to come to court, to attend religious services,  
16 and that's it. That's it. Other than that -- and all those  
17 things have to be cleared in advance with your pretrial officer  
18 because the officer knows that at 10:00 o'clock in the morning  
19 on June 10th, you're going to be at your lawyer's office. All  
20 right? But other than that, you can't leave the house. You  
21 can't be working for DoorDash, I'm sorry, you can't be dashing  
22 around town.

23           So, in essence, you're going to stay in jail, but jail  
24 is going to be your parents' home.

25           THE DEFENDANT: I understand.

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1 THE COURT: Okay.

2 The minute that -- the pretrial officer is going to  
3 help your family set this up, and there will be a phone in your  
4 home that when they call, you better pick up that phone,  
5 because if you don't pick up that phone, the next call they're  
6 going to make is to me, and, at that point, the government's  
7 position here becomes much more convincing to me, and I'm very  
8 happy to sign a warrant for your arrest. You don't have any  
9 margin for error here. One misstep, you're going in. I can't  
10 say it any more clearly than that. I want you to understand  
11 it.

12 Now, here are the conditions:

13 One, you surrender your passport, all travel  
14 documents, and make no new applications under any name for  
15 travel documents;

16 You're restricted to the Southern and Eastern  
17 Districts of New York, but you're on home confinement, so,  
18 basically, that means that what you can do is go to religious  
19 services or go to court here in the Southern District of New  
20 York, but not in Connecticut and not in New Jersey;

21 You'll obtain or maintain employment as approved by  
22 pretrial or be involved in educational programs as approved by  
23 pretrial, but it cannot be a kind of employment that requires  
24 you to have internet access or that allows you to be dashing  
25 all over town. That's -- excuse me, no, you're going to talk

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1 to your lawyer, not to me. Let me finish with the conditions.  
2 Okay?

3 You are required to have mental health evaluation and  
4 treatment. You are very much in need of some mental health  
5 counseling, very much, based on what I've seen so far. And if  
6 medication is prescribed for you by a mental health treatment  
7 provider, you must take the medication. That's a condition of  
8 your supervision;

9 You may not possess a firearm, a weapon, or  
10 destructive device, or — let me underscore this — ammunition  
11 for a firearm, weapon, or destructive device;

12 You have to make all your state court dates;

13 You have to abide by the temporary orders of  
14 protection that have been entered against you, have absolutely  
15 no contact with any of your victims on the state crimes or this  
16 crime. Should you have any knowledge of who they are or a way  
17 to do that, you can have no contact with them at all;

18 Your use of the internet during your pretrial  
19 supervision period is limited to contact with your lawyer, and  
20 the mental health treatment provider, and your pretrial  
21 services officer. That's three people — your lawyer, pretrial,  
22 the mental health counselor — nobody else, nobody else;

23 You may not post any tweets, sweets, videos,  
24 Instagrams under your name or any other name or handle of any  
25 sort while this is pending.

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1 Do you understand me?

2 THE DEFENDANT: Yes.

3 THE COURT: Good. Because I hear about one, in you  
4 go.

5 Yes, Mr. Kaminsky.

6 MR. KAMINSKY: It occurs to me, your Honor, that so  
7 limiting his internet usage may prevent him from applying for  
8 jobs, which I think might be a good thing.

9 THE COURT: Whether he applies for a job or not is up  
10 to pretrial. I'm inclined to leave him where he is; I'm  
11 inclined to leave him in his home.

12 MR. KAMINSKY: Okay.

13 THE COURT: All right. At least until the mental  
14 health counselor gets a hold of him, and we know what we're  
15 doing. But what I said was obtain and maintain employment as  
16 approved by pretrial, educational programs as provided and  
17 approved by pretrial. Pretrial may want him to go to school, I  
18 don't know, but I need him to be off the internet as much as  
19 humanly possible, okay? So if there's something that comes up,  
20 Mr. Kaminsky, that would require a modification of this  
21 condition, you can talk to the government, and you can always  
22 come to me.

23 MR. KAMINSKY: Understood.

24 The other issue, and maybe this is asking for too  
25 much, your Honor, is it occurs to me if he's going to be in his

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1 apartment all day and not able to work, it might be good for  
2 him to be able to use Netflix or something like that.

3 THE COURT: Mr. Kaminsky, I've imposed a condition.  
4 Your client --

5 MR. KAMINSKY: I'll send him some books, your Honor.

6 THE COURT: Your client used the internet to broadcast  
7 something that never should have happened, and I really think  
8 this is a bailable case, but that's all I think, Mr. Kaminsky.

9 MR. KAMINSKY: Understood.

10 THE COURT: I watched that video. That is a terrible  
11 thing to do to anybody -- a terrible thing to do to anybody --  
12 and he used the internet to do it.

13 Also, Francesca, from pretrial, I want drug testing.

14 MS. PIPERATO: I'm sorry, your Honor, I couldn't hear.

15 THE COURT: Drug testing. I'm imposing that as a  
16 condition.

17 THE DEPUTY CLERK: Francesca, the Judge is asking if  
18 drug testing condition is appropriate.

19 THE COURT: No, I'm saying it's going to happen. I've  
20 decided it's appropriate.

21 THE DEPUTY CLERK: It will be listed, Francesca.

22 MS. PIPERATO: Okay. Can I, if possible, clarify one  
23 condition that I didn't hear?

24 THE COURT: Yes.

25 MS. PIPERATO: Home detention with location

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1 monitoring?

2 THE COURT: That is correct, Francesca.

3 MS. PIPERATO: Okay. If possible, can it please be  
4 noted that the defendant is permitted to self-install the  
5 equipment at the direction of pretrial services?

6 THE COURT: Francesca, I'm not sure how that works.  
7 We have here a crime that is alleged to have been committed  
8 using the internet. I want him to have as little to do with  
9 this as possible, but if you can provide the equipment and  
10 instructions for how to install it? Is that what you want to  
11 do?

12 MS. PIPERATO: Well, for the home detention, because  
13 I'm talking about the bracelet, it allows us to have him report  
14 home and directs him --

15 THE COURT: Wait, wait, wait.

16 THE DEPUTY CLERK: Francesca, stop.

17 THE COURT: Slow down, Francesca.

18 THE DEPUTY CLERK: You're going to start from the top.  
19 The court reporter did not get what you said. Explain what  
20 you're trying to tell the judge.

21 MS. PIPERATO: Okay. For home detention with location  
22 monitoring, we would ask the Court to note that the defendant  
23 be permitted to self-install the equipment. This allows us to  
24 direct the defendant to report home and to his installing the  
25 remaining equipment with our direction.



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1 THE COURT: Okay, if that's what you're doing these  
2 days. Is that what you're routinely doing these days,  
3 Francesca? Is that the usual procedure these days?

4 MS. PIPERATO: Yes, it is.

5 THE COURT: Okay. Then fine.

6 MS. PIPERATO: And for the computer monitoring, if the  
7 Court would like to know, pretrial services is to monitor the  
8 defendant's computer, then we would have somebody install that  
9 equipment and monitor his internet access.

10 THE COURT: Okay. Well, pretrial services must  
11 monitor his computer usage, must monitor his computer usage.

12 MS. PIPERATO: Yes.

13 THE COURT: So I understand you're trying to avoid  
14 making a home visit. You may have to make a home visit, or  
15 somebody from your office who is vaccinated may have to make a  
16 home visit in this case, but whatever equipment is needed has  
17 to be installed.

18 MS. PIPERATO: I believe the equipment for the  
19 computer, I don't think we physically have to be there to  
20 install it.

21 THE COURT: I'm sorry, I didn't understand that.

22 THE DEPUTY CLERK: Repeat that, Francesca.

23 MS. PIPERATO: For the computer monitoring equipment,  
24 I'm not exactly sure if someone has to physically be there or  
25 have the defendant report to the office. I can get

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1 clarification on that.

2 THE COURT: Ah, okay. You'll need to get  
3 clarification on that because I really have to tell you, I'd  
4 rather somebody went to his home and installed it.

5 Were there other conditions?

6 MS. LASKY: If I may, your Honor, just to clarify –  
7 sorry – again, on the internet point, is it your Honor's  
8 condition that he is not to have his own internet-capable  
9 phone, such that he could have a flip phone if he's calling his  
10 lawyer, for example, or something? I just don't know if  
11 pretrial can similarly monitor a phone that is capable of using  
12 the internet.

13 THE COURT: I know less than you know. I know less  
14 than you know. If there is a phone, a noninternet-capable  
15 phone, that will allow him to call his lawyer, fine, but I know  
16 for a fact that he's going to need to have some  
17 internet-capable device in order to have the mental health  
18 counseling, because it's not going to be in person, it's going  
19 to be remote. That's what they're all doing these days.

20 MS. LASKY: Understood, your Honor. I think it's the  
21 difference between having your own device or, for example,  
22 using a family device that isn't a constant temptation, but I  
23 defer to your Honor about the most elegant way to craft it,  
24 your Honor.

25 MR. KAMINSKY: Your Honor, I think we can let pretrial

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1 sort it. I do believe they can monitor phones, but if they  
2 can't, obviously he can't have an internet-accessible phone.

3 THE COURT: Okay, fine. That's fine with me.

4 MR. KAMINSKY: Your Honor --

5 THE COURT: Somehow I rather imagine that we may as  
6 well have an initial conference. I rather imagine that the  
7 government has provided all the discovery that it really needs  
8 to provide.

9 MS. LASKY: Your Honor, we have not. We will be able  
10 to do so in a matter of a week or two, your Honor. The  
11 government and defense --

12 THE COURT: Has he been arraigned, by the way?

13 MS. LASKY: I'm sorry?

14 THE COURT: He has not been arraigned, yet, on the  
15 indictment?

16 MS. LASKY: Correct, your Honor.

17 THE COURT: Can we arraign him?

18 MS. LASKY: Thank you, your Honor.

19 THE COURT: I had no idea.

20 THE DEPUTY CLERK: Mr. Sanchez, the United States  
21 Attorney for the Southern District of New York has filed an  
22 Indictment 21 CR 269, which charges you in one count with false  
23 information and hoaxes. It states that on or about  
24 February 13, 2021, in the Southern District of New York, you  
25 knowingly engaged, and attempted to engage, in conduct with

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1 intent to convey false and misleading information under  
2 circumstances where such information may reasonably be  
3 believed, and where such information indicated that an activity  
4 had taken, was taken, or would take place that would constitute  
5 a violation of Title 18, United States Code, Sections 844(i)  
6 and 2332a(a), to wit, you conveyed a hoax, threat to detonate a  
7 bomb in the vicinity of a restaurant in Manhattan, in violation  
8 of Title 18, United States Code, Section 1038(a)(1) and 2.

9 Have you received a copy of this indictment?

10 THE DEFENDANT: Yes.

11 THE DEPUTY CLERK: Have you discussed it with your  
12 attorney?

13 THE DEFENDANT: Yes.

14 THE DEPUTY CLERK: How do you plead at this time to  
15 this indictment?

16 Counsel?

17 THE COURT: Counsel, you want to enter a plea for him?

18 MR. KAMINSKY: Not guilty, your Honor.

19 THE COURT: Thank you.

20 Okay. So if the government can finish producing  
21 discovery within ten days, Mr. Kaminsky, how much time do you  
22 want?

23 MS. LASKY: Your Honor, just to clarify, the  
24 government and defense counsel -- I believe defense counsel is  
25 considering our protective order, so we will want to have that

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1 in place, but then ten days should likely be enough, but we  
2 have some large videos that the issue has been trying to  
3 transfer them and all the technology there, so those might take  
4 a little bit longer, but the bulk of it, we can get out, your  
5 Honor.

6 THE COURT: Mr. Kaminsky?

7 MR. KAMINSKY: I haven't seen the protective order.  
8 I'm not sure why we need one for stuff that was on the  
9 internet, but we'll discuss it.

10 Wait, have you sent me a protective order?

11 MS. LASKY: Yes.

12 MR. KAMINSKY: I have not read the protective order  
13 that apparently has been sent to me.

14 I don't think I need more than 30 days to review the  
15 discovery, your Honor. The reason why I don't want to rush  
16 things is because I might make an application to the Young  
17 Adult Opportunity Program, I want to see how the treatment  
18 goes. So there are things that are going to be going on other  
19 than just my reviewing the discovery, your Honor.

20 THE COURT: Well, when should we set this for, the  
21 next conference?

22 MR. KAMINSKY: I would say late June, your Honor.

23 THE COURT: How about July -- I want to be here. I  
24 have July 6, 7, 8, 12, 13, 14, 15.

25 MR. KAMINSKY: Could we do 12, 13, or 15, your Honor?

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1 THE COURT: Yes. We can do the afternoon of the 12th,  
2 anytime on the 13th.

3 Jim, what have we got?

4 THE DEPUTY CLERK: 3:00 o'clock on the 13th.

5 THE COURT: Is that okay with the government?

6 MS. LASKY: Yes, your Honor.

7 THE COURT: Okay. So 3:00 o'clock on Tuesday,  
8 July 13th. That will be in this courtroom, unless you get a  
9 notice that it's been moved to another courtroom, because my  
10 courtroom can be used for trials.

11 MR. KAMINSKY: Your Honor, there remains the question  
12 of whether Mr. Sanchez can be released today or only once the  
13 signatures are on the bond.

14 THE COURT: I really think we should get everything  
15 signed and sealed, please.

16 MR. KAMINSKY: We'll move expeditiously, your Honor.

17 THE COURT: Thank you very much.

18 So, Mr. Sanchez, I mean business. So I'm letting you  
19 go home, but home really is jail, and I mean it. And you  
20 better cooperate with your pretrial officer, you better  
21 cooperate with your lawyer, you better cooperate with the  
22 mental health treatment, you better not think you're smarter  
23 than I am, because you're not, you better stay off the  
24 internet, and you will be back in this courtroom on the  
25 afternoon of July 13th, and we'll see how things are going.

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1 Time is excluded in the interests of justice, the  
2 defendant's interests in a speedy trial being outweighed by the  
3 need for the government to complete the production of  
4 discovery, and with the defendant's consent, correct?

5 MR. KAMINSKY: Yes.

6 THE COURT: Okay. Thank you.

7 Anything else?

8 MS. LASKY: Just one remaining question from the  
9 government on an administrative note: The copy -- the  
10 submission that I filed yesterday, whether I can submit a  
11 redacted copy of that on the docket? Because it --

12 THE COURT: Yes.

13 MS. LASKY: Thank you, your Honor.

14 I guess one other administrative note, just to note  
15 for the record, is the pretrial conference that was previously  
16 scheduled will be --

17 THE COURT: Yes, we'll just get -- move that over to  
18 July 13th.

19 MS. LASKY: Thank you, your Honor.

20 THE COURT: There's no reason to bring you back again.

21 MS. LASKY: Right.

22 THE COURT: Okay.

23 MS. LASKY: Okay.

24 THE COURT: All right. Thank you, everybody.

25 Ma'am, sorry to make you his jailer, but we'll see

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1 what happens. Okay?

2 Just remember, one misstep, you're going in.

3 THE DEFENDANT: Thank you.

4 \* \* \*